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No. 34881

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1930

No. 63

ABIE STATE BANK, APPELLANT,

VS.

ARTHUR J. WEAVER AS GOVERNOR OF THE STATE OF NEBRASKA; CLARENCE G. BLISS AS SECRETARY OF THE DEPARTMENT OF TRADE AND COMMERCE, APPELLEES;

WILLIS M. STEBBINS AS TREASURER OF THE STATE OF NEBRASKA, APPELLEE;

MARY E. GANDY, JAMES H. COVEY, THEODORE H. BUELT, HUFFMAN & SEYMOUR, INC. (A CORPORATION), LEONARD N. SEYMOUR, JOHN HALBUR AND FRANK N. HEBENSTREIT, APPELLEES.

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI

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May It Please the Court:

Your petitioners, Mary E. Gandy, James H. Covey, Theodore H. Buelt, Huffman & Seymour, Inc. (a corporation), Leonard N. Seymour, John Halbur and Frank N. Hebenstreit, suggest that there is a diminution of the record in the above entitled cause and respectfully move that this Honorable Court issue its writ of certiorari herein directed to the Supreme Court of the State of Nebraska, commanding that court to certify and send to this court certain papers which are of record in that court in this cause. These papers are particularly described as follows:

Demurrers of interveners, Frank A. Hebenstreit and John Halbur.

Order overruling demurrers of Frank A. Hebenstreit and John Halbur.

Answer and cross-petition of intervener, Mary E. Gandy.

Answer and cross-petition in intervention of James H. Covey, Theodore H. Buelt, Huffman & Seymour, Inc. (a corporation), and Leonard N. Seymour.

Answer of Abie State Bank on its own behalf and on behalf of the other banks for whom said suit is brought to cross-petition and reply to answer of interveners, James H. Covey, et al.

Answer of Abie State Bank on its own behalf and on behalf of the others for whom suit is brought to the cross-petition of intervener, Mary E. Gandy, and reply to answer of Mary E. Gandy.

Reply of Abie State Bank for itself and the other banks named in the petition to the answer of all the defendants and interveners.

Order of court substituting Arthur J. Weaver as Governor of the State of Nebraska, as defendant, for Adam McMullen, as Governor of the State of Nebraska.

The stipulation entered in open court as to interveners, James H. Covey, Theodore H. Buelt, Leonard N. Seymour, John Halbur, Huffman & Seymour, Inc., a corporation, stipulating and admitting certain of the issues made by the pleadings as to them, and being pages 192, 193, 194 and the first ten lines of page 195 of volume 1 of the bill of exceptions.

The testimony of F. A. Hebenstreit, intervener and cross-petitioner, and stipulation in reference thereto, being pages 348 to the middle of page 353, inclusive, of Volume 2, bill of exceptions.

The motions for judgment by the defendants and all interveners except intervener Stebbins, and the ruling of the trial court thereon, shown at pages 383 and 384 of volume 2 of bill of exceptions.

The testimony of Charles W. Bryan shown at pages 712 to the middle of page 716 of volume 3, bill of exceptions.

REASONS FOR THIS MOTION

As reasons for and in support hereof, your petitioners show:

1. Your petitioners, Mary E. Gandy, James H. Covey, Theodore H. Buelt, Huffman & Seymour, Inc., Leonard N. Seymour, John Halbur and Frank N. Hebenstreit, were parties to this action in the District Court of Lancaster County, Nebraska, and in the Supreme Court of the State

of Nebraska as interveners with defendants, and are appellees herein. The foregoing pleadings, by which the sufficiency of the plaintiff's petition to state a cause of action was challenged, and also by which issues were made and joined, are omitted from the record brought to this court, and the evidence of these petitioners offered and received as portions of the record aforesaid is omitted. All of the evidence in the record introduced on behalf of defendants was likewise received on behalf of these petitioners.

The judgment appealed from appears at page 58 of the printed record of this court, and shows your petitioners as parties to said judgment and the issues adjudicated in their favor therein. There is one general decree, and the rights of the petitioners and all other parties are determined therein.

Your petitioners were depositors in state banks with claims, mostly adjudicated, against state banks, and joined issues and presented evidence on behalf of themselves and all other depositors similarly situated, and by their representative action over $5,000,000 of claims were affected.

Your petitioners on behalf of themselves and other depositors similarly situated presented the issue of their contractual rights with plaintiff banks and also the issue of estoppel as to their matured claims from deposits in failed banks, some of which were adjudicated claims against the depositors' Guaranty Fund, and petitioners also prayed for affirmative relief against plaintiff banks.

2. Said pleadings and portions of the record are indispensable to the presentation, hearing and determination

of this suit; and especially as to these petitioners and other depositors on whose behalf they appear in this action.

3. Said pleadings, evidence, motion and court order are a part of the record, and are important both in procedure and on the merits.

4. Said pleadings and record are essential to a proper understanding and decision of this case by this court upon review.

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Nebraska, commanding that court to certify and send to this court the papers enumerated herein.

Your petitioners have ordered from the clerk of the Supreme Court of the State of Nebraska a certified transcript of the foregoing parts of the record, and as soon as the same can be obtained, will have same printed and filed herewith. It has been impractical to secure the same to print and file concurrently with this petition.

WILLIAM J. HOTZ,
CLINTON J. CAMPBELL,
FRANK A. HEBENSTREIT,
RALPH G. COAD,
ROBERT H. HOTZ,
HENRY R. GOWER,
Counsel for Mary E. Gandy, James H. Covey, Theodore H. Buelt, Huffman & Seymour, Inc., Leonard N. Seymour, John Halbur and Frank N. Hebenstreit, Appellees.

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA
CITY OF WASHINGTON } ss.

I, Henry R. Gower, Counsel for Mary E. Gandy, James H. Covey, Theodore H. Buelt, Huffman & Seymour, Inc., Leonard N. Seymour, John Halbur and Frank N. Hebenstreit in the above entitled cause, do solemnly swear that the facts recited in the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari" are true.

HENRY R. GOWER,
Counsel for Mary E. Gandy, James H. Covey, Theodore H. Buelt, Huffman & Seymour, Inc., Leonard N. Seymour, John Halbur and Frank N. Hebenstreit.

Sworn to and subscribed before me this 11th day of August, 1930.

Louis F. Olga
(SEAL) *Notary Public.* DC

JOINDER IN FOREGOING SUGGESTION OF DIMINUTION OF RECORD AND MOTION

Comes now Arthur J. Weaver as Governor of the State of Nebraska, and Clarence G. Bliss as Secretary of the Department of Trade and Commerce, appellees in the above

suit, and acknowledge service upon them of a copy of the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari", and acknowledge service of notice of hearing thereon, and these appellees join in said motion and respectfully represent that said portions of the record are indispensible to a full consideration and determination of this case in this court.

ARTHUR J. WEAVER as Governor of the State of Nebraska, and CLARENCE G. BLISS as Secretary of the Department of Trade and Commerce.

By C. A. SORENSEN,
Attorney General,
State of Nebraska.